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EPA Cites Chemours' PFAS Plants Under TSCA, In Possible Enforcement Push

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EPA has cited chemical company Chemours for violating the Toxic Substances Control Act (TSCA) at two of its plants that manufacture per- and polyfluoroalkyl (PFAS), a sign that environmentalists say may indicate stepped-up EPA enforcement over the issue though they say it also raises concerns about the accuracy of EPA's PFAS data.

"Hopefully this action signifies that EPA is taking a much closer look at the companies producing PFAS chemicals and that additional auditing and enforcement actions will be forthcoming," says David Andrews, senior scientist at the Environmental Working Group (EWG).

But he says that the company's alleged violations, including its failure to submit a series of mandatory notifications to EPA and report product data "raise fundamental concerns about the accuracy of the information that EPA does have on chemicals being produced and used in the [United States]."

And he also raises concerns that Chemours allegedly failed to notify a customer that a chemical they were selling was subject to a TSCA use restriction. "I would be incredibly worried," he said.

EPA Feb. 13 issued a notice of violation (NOV) against Chemours for violations related to the manufacture of new chemicals subject to TSCA, specifically identifying violations at its Fayetteville Works facility, near Fayetteville, NC, and Washington Works plant near Parkersburg, WV.

The NOV alleges a series of TSCA violations at the two plants stemming from 2017 inspections at the two plants as well as information the company provided.

Among other things, EPA says that at the Fayetteville plant, the company failed to comply with a TSCA significant new use rule (SNUR) that requires GenX compounds -- newer, shorter-chain chemicals in the PFAS class -- to be manufactured in "an enclosed process," but that inspections found air emissions.

Also, it found other TSCA reporting and pre-manufacture notice violations at the plant related to unnamed chemicals.

Chemours in a statement says that while it is still evaluating the NOV, it has already addressed many of the issues EPA raises "and [has] responses to address the others."

EPA's enforcement action came just a day before EPA Administrator Andrew Wheeler announced a comprehensive "action plan" to address widespread concern over contamination from PFAS, in part touting that the agency was taking enforcement actions on PFAS and would not slow down those efforts.

In particular, he stressed EPA would not "slow down on enforcing the current drinking water" health advisory of 70 parts per trillion.

While Wheeler emphasized enforcement, he offered few new commitments to regulatory action -- for which the agency was heavily criticized -- though the plan does indicate the agency will consider potential regulatory actions.

For example, the action plan says the agency is considering whether to revise a proposed SNUR for PFAS chemicals that the Obama administration issued in 2015 but which was never finalized.

"Depending on the outcome of its review and determination, under TSCA the EPA may take actions on a new PFAS or significant new PFAS use, ranging from imposing restrictions or limitations (e.g., use restrictions, production volume cap, limitation on releases to water, etc.) to an outright prohibition on manufacture to ensure that the substance does not present an unreasonable risk," the action plan says.

TSCA Regulation

PFAS are a class of over 4,000 chemicals that are widely used for their nonstick properties. But they have been linked to adverse health effects including certain cancers, ulcerative colitis and other conditions, sparking concern among communities as their discovery in community drinking water supplies has grown.

As a result, the agency has faced criticism over its lack of regulation, including under TSCA, where it has approved thousands of PFAS for various uses.

For example, EWG has urged EPA and other regulatory agencies to “stop approving new PFAS chemicals” and has urged EPA to “finalize a rule that would require companies to get EPA approval before using some kinds of PFAS chemicals.”

The enforcement actions against Chemours stops short of such actions though it does require the company to limit releases.

At the Washington Works facility, EPA cited Chemours for failing to “properly control the effluent and emissions during the use of GenX as required by a 2009 TSCA Section 5(e) consent order.” Under the order, the company is required to recover and destroy or recycle GenX at an efficiency rate of 99 percent from effluent process streams and air emissions, the NOV says.

The violations under both facilities fall under TSCA sections 5 and 8. Section 5 generally requires notice to EPA if a company plans to manufacture a new chemical for a non-exempt commercial purpose, according to EPA. Under Section 8, EPA has the authority to mandate reporting and record-keeping by entities that manufacture, import, process or distribute chemicals in commerce, the notice says.

The notice comes not long after EPA in December issued a “Notice of Temporary Objection” to Chemours Netherlands branch concerning GenX wastes it was to import into the United States for waste management.

EPA says its investigation at the Fayetteville and Parkersburg sites is continuing.

While the agency says it has the authority to assess penalties, seek injunctive relief or pursue criminal actions, it is not. Rather, it calls on the company to take “immediate action to correct the violations identified in the NOV and come into compliance with TSCA.” It says Chemours within 30 days should outline actions it has taken to comply, or a timeline for complying. It also asks Chemours for additional information related to the violations.

Further, EPA reiterates a previous unfulfilled request for Chemours, pursuant to TSCA Section 11, to provide documentation on when it “first learned about the GenX-related contamination in and around” the two facilities, including contamination in drinking water. “Submission of this information is significant to Chemours' compliance with substantial risk information required under TSCA Section 8(e),” the notice says.

The company says in its statement that NOV references inspections completed in 2017, adding that it has “already taken significant action to address PFAS emissions between 2017 and today.” For instance, it cites a \$100 million investment at the Fayetteville site to install new emission control technology to meet the 99 percent efficiency reduction in PFAS air and water emissions by the end of this year.

Further, overall, Chemours last year adopted a company-wide goal of reducing air and water emissions of fluorinated organic chemicals by 99 percent or greater at all of its sites, it says. -- *Suzanne Yohannan* (syohannan@iwpnews.com)

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